

## **MEETING MINUTES**

### **MILPITAS PLANNING COMMISSION Milpitas City Hall, Council Chambers 455 E. Calaveras Blvd., Milpitas, CA**

**Wednesday, August 26, 2015**

- I. PLEDGE OF ALLEGIANCE**      **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. ROLL CALL/ SEATING OF ALTERNATE**      **Commissioners**  
**Present:**      Chair Sudhir Mandal, Vice Chair Rajeev Madnawat,  
                         Commissioners Larry Ciardella, Hon Lien, Ray Maglalang,  
                         Zeya Mohsin  
  
**Absent:**      Gurdev Sandhu, Demetress Morris  
  
**Staff:**      Bill Ekern, Gary Baum, Adam Petersen, Sarah Fleming
- III. PUBLIC FORUM**      **Chair Mandal** invited members of the audience to address the Commission and there were no speakers.
- IV. APPROVAL OF MEETING MINUTES**      **Chair Mandal** called for approval of the August 12, 2015 meeting minutes of the Planning Commission.  
  
**Motion** to approve Planning Commission meeting minutes.  
Motion/Second:      Vice Chair Madnawat/Commissioner Maglalang  
AYES:      6  
NOES:      0  
ABSTAIN:      0
- V. ANNOUNCEMENTS**      Chair Mandal announced that a work session between the City Council and Planning Commission is tentatively scheduled for Tuesday, October 6.
- VI. CONFLICT OF INTEREST**      **Interim City Attorney Gary Baum** asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.  
  
There were no reported conflicts.

**VII. APPROVAL OF  
AGENDA**

**Chair Mandal** asked if staff or Commissioners had changes to the agenda and there were none.

**Motion** to approve the August 26, 2015 agenda as submitted.

Motion/Second: Commissioner Mohsin/Commissioner Maglalang

AYES: 6

NOES: 0

**VIII. CONSENT  
CALENDAR**

**NO ITEMS**

**IX. PUBLIC HEARING**

**NO ITEMS**

**X. NEW BUSINESS**

**X-1 PRESENTATION BY INTERIM CITY ATTORNEY**

Interim City Attorney Gary Baum thanked the commissioners for their hard work and time spent on the commission. He reviewed the rules and responsibilities of the Planning Commission including:

- Each commission member must be a registered voter and a resident of Milpitas
- The Planning Commission serves as an advisory body to the City Council and its role is to provide recommendations to the City Council
- All land use issues are required to come before the Planning Commission unless they are delegated to a zoning administrator or staff member who fills that role
- The Planning Commission's role is to review all development applications and any changes to the General Plan

Mr. Baum explained the General Plan and that the City's zoning must conform to the General Plan or be changed to conform to it. The Planning Commission's role is to review each application to determine whether or not it conforms to the General Plan; otherwise, the only way to approve it is to change the General Plan. He said that changing the General Plan is considered serious enough that the government code limits cities to changing it just four times per year.

Due process is important and means the commission is required to have a full and fair hearing and needs to allow applicants to present their projects and neighbors or opponents to have their say. It is important to always have a full and fair hearing and that is why it is important for commissioners to disclose any contact they have had, contributions, or any other reasons for a conflict.

One of the major roles of the commission is to determine findings prior to approving any project, and the findings connect the facts with the law. It is critical that the Planning Commission adopt findings for each project approved as there has to be a link between the evidence provided at the hearing and the approval of the project and if one makes findings

there must be facts to support them. Findings justify staff's analysis and provide a rationale so that the applicant and anyone who may object knows that the commission made a reasonable decision and also help attorneys in the event they need to litigate the matter.

Mr. Baum discussed the importance of nexus and said there has to be a nexus between a project's impact and the conditions of approval.

Mr. Baum said the commission can regulate projects for aesthetic reasons, however commissioners should follow a design guideline and articulate the reason why it is being addressed. He said the standard of just not liking a project is not a standard, and conditions need to be justified.

Mr. Baum said the issue of economics is a difficult issue for a commission, but generally the economics of a project should not be the commission's concern. It is not the city's responsibility to determine whether one business can thrive or not, or whether a business is a good idea or not; however, if the General Plan refers to certain economic issues then that rationale can be used.

Commissioner Mohsin asked if commissioners can make changes to plans. Mr. Baum said it can be difficult for both staff and the applicant if commissioners make individual design review comments at the time an item gets to the commission.

Commissioner Mohsin asked if commissioners can make suggestions for building standards such as green buildings. Mr. Baum said it is possible and that city codes are changing to reflect much of that. Mr. Ekern said that type of standard falls into the Building Code and the General Plan lays out how green the City's direction needs to be and staff works to incorporate that.

Vice Chair Madnawat asked about findings and what happens in the event that the commission's findings are not the same as those of staff. Mr. Baum said that in the event there is dramatic difference, then staff can bring the findings back to the commission based upon the oral record. If there are minor changes, then the record that moves forward will include meeting minutes. He said there are three ways to change the findings, by changing the resolution, making a full oral record in the record, or directing staff to bring them back to the commission.

Vice Chair Madnawat questioned the relationship between the commission and the Building and Planning departments and the types of building improvements they can recommend, and Mr. Baum said they can make recommendations when reviewing the Zoning code and General Plan, and make suggestions and ordinance changes to the City Council, but is limited in what they can direct staff to do.

Vice Chair Madnawat said he recently added a condition that a building be wired for future installation of solar panels and asked if that was acceptable and Mr. Ekern said that generally that recommendation can be made as it does not affect the exterior of the building or require a change in the code.

Chair Mandal said it is important if commissioners have separate findings that they be reflected on the record.

Commissioner Maglalang questioned the rules of commissioners meeting with developers and applicants and Mr. Baum said that in general it is important that commissioners do not make commitments to developers. Mr. Ekern said that as a general rule, if a

commissioner discusses a project with a developer, it is important to make it publicly known that a meeting or conversation took place, and it is important to recuse themselves if they feel they cannot be unbiased. Mr. Ekern said that staff can add a clarifying rule to the bylaws if the commissioners want that.

Mr. Baum said that commissioners need to disclose all evidence received and encouraged commissioners not to take anything from any developers as it can taint the process. Mr. Maglalang asked if it was acceptable to have dinner with developers and Mr. Baum said this would fall under the gift policy.

Commissioner Lien said she has been invited to meet with developers and she is still unsure if it is okay to accept and Mr. Baum encouraged the commission to discuss this and reach a decision as a commission.

Commissioner Ciardella said the key is to not make any commitments to developers. He said that if a project is proposed, and he dislikes the plans, he believes he can impose design changes and would have no issues bringing them to the attention of the commission, because as long as there are three other votes that is all that is needed.

Chair Mandal referenced economic analysis and asked if the amount of fees paid from developers, or tax revenue from a project, can be factored into the equation of a project approval and questioned how much that should be part of their decisions. Mr. Baum said the code does refer to redevelopment and the commission can approve projects they think are good for the city financially.

Mr. Baum explained that it is a conflict for a commissioner to meet with a developer and make a decision, or make a comment, on a project before it is heard publicly, and that commissioners should be making decisions at the planning commission meeting.

Mr. Ekern added that in regards to economics, a project needs to be consistent with the General Plan and an economic investment is not a reason to approve a project.

## **X-2                    CONDITIONAL USE PERMITS**

Senior Planners Adam Petersen and Sarah Fleming reviewed a PowerPoint presentation explaining what a Conditional Use Permit (CUP) is, the application process and the commission's responsibilities in approving applications. Ms. Fleming explained that a CUP allows special use in a zone where it is not normally permitted as long as it meets certain requirements or conditions.

Mr. Petersen said there are two types of CUPs, major and minor, and this dictates which body will review and approve the permit, as a major CUP must go before the Planning Commission and a minor CUP can be reviewed and approved by the Planning Commission subcommittee or at the staff level.

Mr. Petersen explained that CUP requests are reviewed by staff to ensure consistency with the General Plan, conformance to the zoning ordinance, and no negative impact from the use, and the Planning Commission's responsibility is to confirm that each use meets these requirements.

There was discussion on findings and the importance of using facts to support findings. Mr. Baum said if a commissioner wishes to deny a project, it is helpful to explain why it is being denied, for example the commissioner believes more traffic will affect the neighborhood. He said it is good to back up decisions with analysis and facts.

Mr. Ekern said if the Planning Commission makes a decision against staff's recommendation, it is important that the findings be clear.

There was discussion on the types of changes that commissioners can request, and Mr. Ekern said if a commissioner believed it would be beneficial to the community if they included something, he would argue they can be added as conditions of approval, but it would have to be added based on the use.

Commissioner Ciardella asked if a farmers market is considered a conditional use and Mr. Ekern said they are allowed in some districts and in others they are not. Commissioner Ciardella then asked about evening farmers markets, and Mr. Ekern said a CUP allows flexibility and the hours of operation can be included in a CUP, and it would depend on the neighborhood in which it is going and any other issues.

Chair Mandal asked where ADA accessibility is covered and Mr. Petersen said that applicants design projects to be ADA accessible and Building Department staff reviews them to ensure they are consistent with ADA requirements.

**XI. ADJOURNMENT**      The meeting was adjourned at 8:08 PM to the next meeting scheduled on Wednesday, September 9, 2015.

**Motion** to adjourn to the next meeting.

Motion/Second:    Vice Chair Madnawat/Commissioner Mohsin

AYES:            6

NOES:            0

*Meeting Minutes submitted by  
Planning Secretary Elia Escobar*